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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 385 of 2000
with
CIVIL APPLICATION No 9478 of 2000
with
APPEAL FROM ORDER No 386 of 2000
with
CIVIL APPLICATION No 9475 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HABRON CO-OPERATIVE HOUSING SOCIETY LIMITED

Versus

MEENAKSHIBEN ANANTKUMAR MACWAN

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Appearance:

1. Appeal from Order No. 385 of 2000

MR MB GANDHI for Petitioner No. 1

MR PJ PATEL for Respondents No. 1-2

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CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 19/12/2001

C.A.V. JUDGEMENT

1. With the consent of the parties, both the appeals are heard together and hereby decided by this common judgment and order.

2. The only point involved in these two appeals is as under :

(a) Whether looking to the facts and circumstances of the case, the dispute of the parties falls under Sec. 96(1)(b) of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as the said Act) or the Civil Court has jurisdiction to try the same ?

3. The short facts in nutshell are as under :

The appellant/original plaintiff is a society whereas the respondent no. 1 is/was a member of the appellant society and the respondent no. 2 is the purchaser of plot no. 16 from respondent no. 1 vide registration no. 1982 with the Sub-registrar office at Anand for a consideration of Rs.2,18,100/-.

4. It is the case of the appellant-society that merely by registered document executed between the respondents, the respondent no. 2 do not get any right or interest in the said plot. As per the rules of the society, necessary permission must be obtained by the member of the society i.e. respondent no. 1 to sell the plot to any other third party and that third party should also apply to the society for becoming the member of the society and only on passing of resolution, the said third party can become a member of the society. Moreover, as per the appellant, the third party has to pay transfer-fee, entrance-fee etc. and thereafter only the third party can become member of the society. In view of the fact that no permission is sought by either of the respondents, the alleged Sale-deed between the respondent no. 1 & 2 is null & void and not binding to the appellant-society. Under the circumstances, the appellant-society filed Regular Civil Suit no. 94/00 before the court of Civil Judge (S.D.), Anand and also notice of motion exh. 5 to restrain the respondent no. 2 from constructing anything on the plot till the final hearing of the suit.

5. The learned trial Judge vide his order dated 1.7.00 initially ordered the respondent no. 2 to maintain status-quo in respect of the plot in question. Later on, after hearing the parties, the learned trial judge vide his order dated 30.9.00 dismissed the notice of motion and also vacated ex-parte injunction granted

initially on 1.7.00. Hence, the appellant/society has filed appeal from order no. 386/00 under Sec. 104 read with Order 34 Rule 1(r) of the Code of Civil Procedure.

6. The appeal from order no. 385/00 is filed on the ground that after the order of status-quo was passed against the respondent no. 2, the appellant gave application exh. 30 stating that though the present respondent no. 2 was knowing the order of the court of status-quo, the respondent no. 2 disregarding the order of the court, put bricks and other articles in the foundation and also prepared a small tank. Therefore, the appellants prayed that respondent no. 2 has violated the order of the court and he should be sent to civil jail or his property should be attached.

7. On his application, the learned trial judge issued show-cause notice to respondent no. 2 by passing order on 26.7.00. Ultimately, by order dated 30.3.00, the learned trial judge held respondent no. 2 responsible for disobedience of the order of the court and directed to pay Rs.3,000/- as compensation to the appellant for the disobedience on or before 16.10.00. Aggrieved by the said order below exh. 30 dated 30.9.00 in Special Civil Suit no. 94/00, the appellant-society has filed this appeal from order under Sec. 104 read with Order 34 Rule 1 (r) of the Code of Civil Procedure stating that the compensation of Rs.3,000/- is not adequate in the facts and circumstances of the case. The learned trial judge erred in accepting the apology from the respondent no. 2 and that contemnor is required to be punished by sending him to civil jail and that the learned trial judge also erred in not ordering for removing the construction and maintaining status-quo. The learned trial judge has also erred in not ordering for filling up the excavation, removing the illegal water connection, pulling down the two water tanks and removing the construction of kachcha room with ceiling of iron roof.

8. Heard the learned advocates and gone through the authorities cited by them. It is pertinent to note that both the orders below exh. 30 & exh. 5 are passed by one and the same trial court judge. But both the orders appear to be contrary to each other in view of the fact that while passing final order below exh. 5 the trial court came to a conclusion that the dispute between the parties squarely falls under Sec. 96(1)(b) of the Act and therefore the Civil Court has no jurisdiction to try and pass any order whereas while passing order below exh. 30 the trial court has assumed the jurisdiction and

ordered for fine of Rs.3,000/- towards compensation to the appellant. If the trial court has no jurisdiction to pass order under exh. 5-notice of motion, then how the order can be passed by the same trial court under exh. 30?

9. The learned advocate Mr.M.B.Gandhi for the appellant submitted that there are certain rules and regulations of the appellant-society whereby the member of the society has to give application to the office-bearers of the society before selling plot and also to disclose to whom he wants to sell the plot in question. The intending member has also to apply to the society for becoming member of the society and state his willingness to abide by the rules and regulations and to pay necessary transfer-fee, entrance-fee etc. In this case, no such procedure has taken place and therefore the appellant is not bound by the alleged Sale-deed. Mr.Gandhi also produced the copy of the said rules and regulations. The learned advocate produced the copy of the plaint and copy of the documents produced with the plaint. Under the circumstances, runs the submission of Mr. Gandhi L.A. for the appellant that as the present respondent no. 2 has not filled in the necessary forms as per the requirement of the society, the alleged Sale-Deed between the respondent nos. 1 & 2 is null & void and the injunction as prayed for be granted by holding that only civil court has jurisdiction to try and hear the said suit. Mr.Gandhi further submitted that without accepting the apology of the respondent no. 2, she should be sent to civil jail and mere compensation of Rs.3,000/- is not enough. Mr.Gandhi submitted that the Board of Nominees has no jurisdiction to set aside the alleged Sale-deed that has taken place between the respondents and for that Civil Court has jurisdiction.

10. Mr.Gandhi, L.A. for the appellant relied on the authority in case of Zoroastrian Co-operative Housing Society Ltd. & Anr. V/s District Registrar, Co-operative Societies (Urban) & Ors. reported in 1997(1) G.L.R. 602 and submitted that a society has no unfettered right to decide a question whether a person should be admitted as a member or not. Mr.Gandhi relied on another case of Deccan Merchants Co-operative Bank Ltd. V/s M/s Dalichand Jugraj Jain and others reported in AIR 1969 SC 1320 and submitted that when there is a dispute between a tenant on one hand and society on the other side, the said dispute cannot fall under the purview of Sec. 96 of the Act and the civil court has jurisdiction to resolve such dispute. The case of The Gujarat State Co-operative Land Development Bank Ltd.

V/s P.R.Mankad and another reported in AIR 1979 SC 1203 is relied upon by Mr.Gandhi and submitted that the expression "any dispute" in Sec. 96 of the said Act does not cover dispute by employee of society challenging his removal, on ground that it was act of victimization and that labour court alone is competent to adjudicate upon it. Therefore, when there is specific forum situated under the law, then dispute falling under any category can be put to the specific forum and not any other forum. In substance, it is submitted by Mr.Gandhi that the dispute between the present appellant-society and the respondents is such that the civil court has jurisdiction and board of nominee has no jurisdiction to try and pass order. Therefore, the order passed by the learned trial judge in notice of motion exh. 5 is bad in law and requires interference of this court.

11. Against the aforesaid submission, Mr.Patel L.A. for the respondents submitted that there is no illegality, perverseness or otherwise which requires interference of this court. The trial court has rightly come to the conclusion that looking to the dispute between the parties, only board of nominee has power to resolve the same and civil court has no jurisdiction to try and decide the same. Mr.Patel also relied on the authority of D.M. Cooperative Bank (supra) and submitted that before a person can be said to claim through a member, the claim should arise through a transaction or dealing which the member entered into with the society as a member. If a member entered into a transaction with the society not as a member but as a stranger, then he must be covered, if at all, by the provisions of Sec. 91 1(a)(c). But once it is held that the original transaction was entered into by the member with the society as a member then any person who claims rights or title through that member must come within the provisions of Sec. 91(1)(b) of the Maharashtra Cooperative Societies Act.

12. I have perused the authorities. There cannot be any two opinions regarding the principle laid down in case of The Gujarat State Cooperative Land Development Bank Ltd. (supra) but in case of D.M.Cooperative Bank (supra), the Apex Court has in clear terms stated that the original transaction was entered into by the member with the society as a member then any person who claims rights or title through that member must come within the provisions of Sec. 91(1)(b) of the Maharashtra Co-operative Societies Act which is equivalent in language of Sec. 96(1)(b) of the Gujarat Cooperative Societies Act. In para 16 of the aforesaid judgment, the

Apex Court raised 2 principal questions for the interpretation of Sec. 91 of the Maharashtra Cooperative Societies Act. They are :

" (1) what is the meaning of the expression "touching the business of the society?
(2) what is the meaning of the expression "a person claiming through a member" which occurs in Section 91(1)(b) ?"

13. A reference deserves to be made to a decision of this court in case of Navjivan Mart V/s Rajkot Vibhagiya Nagrik Sahkari Bank Ltd. reported in 1975 G.L.R. 80. In this case, the Division Bench of this Court relied on the case of D.M.Cooperative Bank (supra) and came to a conclusion looking to the facts and circumstances and observed in para 5 as under :

"If the original transaction was entered into by the member with the society as a member then any person who claims rights or title through that member must come within the provisions of Sec. 96(1)(b) of the Gujarat Cooperative Societies Act. In order to find our whether a dispute attracts the provisions of Sec. 96(1), one has to see what in essence is the dispute. Before a person can be said to claim through a member, the claim (made against him) should arise through a transaction or dealing which the member entered into with the society as a member. The claim contemplated in the aforesaid observations would also include the claim made against the non-member. If that claim made against a non-member arrises through a transaction which the member entered into with the society as a member, the non-member can be proceeded against under Sec. 96 provided the non-member is a person who claims his rights or title through that member."

14. From the aforesaid discussion, it is crystal clear that the dispute raised by the present appellant can be resolved by only the Board of Nominees which squarely falls under Sec. 96(1)(b) of the Act. In the same way, when any dispute is to be decided by the Board of Nominees, the trial court has also no power to pass any order under application exh. 30 or any application given thereunder. Therefore, I do not find any illegality, perverseness or otherwise in the order passed by the learned trial court judge and both the appeals deserve to be dismissed with cost of Rs.1,000/- each.

Accordingly both the appeals are dismissed. C.A. also stand dismissed. Ad-interim relief granted earlier, if any, stands vacated. Cost of Rs.1,000/- to be paid in each of the appeals, making a total amount of Rs.2,000/-.

( SHARAD D DAVE, J )

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